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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,024

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Billy W. McDaniel

2003-IP-012882U1

5994

7590

06/28/2007

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EXAMINER

FULLER, ROBERT EDWARD

ART UNIT

PAPER NUMBER

3672

MAIL DATE

DELIVERY MODE

06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/824,024

**Applicant(s)**

MCDANIEL ET AL.

**Examiner**

Robert E. Fuller

**Art Unit**

3672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-11, 13-31, 35-41 and 43-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 8-11, 13-30 and 57-65 is/are allowed.
- 6) ☒ Claim(s) 31, 35-41, 43-46 and 51-56 is/are rejected.
- 7) ☒ Claim(s) 47-50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment, received March 27, 2007, has been considered. In view of the amendments and arguments presented, the objection to the abstract, and the objections to claims 3, 11, 18, 14, 27, 41, and 44 have been withdrawn. The objection to claim 31 is maintained. With regard to the prior art, applicant's arguments with regard to claims 1 and 57 were persuasive, and the rejections of those claims have been withdrawn. Newly discovered prior art has been utilized to reject claim 31 and some of its dependents. Consequently, this action has not been made final.

### ***Claim Objections***

2. Claim 31 is objected to because of the following informalities: The preamble of claim 31 is still inconsistent with the rest of the claim and its dependents. The method being claimed is not a method of stimulating *a single* section of a subterranean formation, but *multiple* segments. Therefore, the preamble must either recite --A method of stimulating multiple sections of a subterranean formation--, or --A method of stimulating a subterranean formation--. Either would be correct. The current preamble cannot be correct. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 31, 35-41, 44-46, and 51-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Akinlade et al. (WO 03/048508 A1).

With regard to claim 31, Akinlade discloses a method of stimulating a section of a subterranean formation comprising the steps of providing a drill string (1) that comprises a stimulation tool (see figures 3 and 4) interconnected as a part of the drill string and a drill bit (8) attached at an end of the drill string, drilling at least a portion of the wellbore using the drill string, wherein the wellbore penetrates the subterranean formation, and stimulating multiple sections of the formation using the stimulation tool as the drill string is removed from the wellbore.

With regard to claims 35, 44, and 45, Akinlade teaches a chemical wash operation using an aqueous fluid (see page 4, lines 8-18).

With regard to claims 36 and 46, Akinlade discloses a jet-forming nozzle port (46).

With regard to claims 37 and 40, Akinlade teaches positioning the stimulation tool next to a first section of the formation and flowing a stimulation fluid through a port to stimulate the first section of the formation. This drilling fluid comprises a cleaning fluid.

With regard to claim 38, Akinlade teaches continuing drilling after stimulating, which would comprise pumping drilling fluid into the drill string, and then into the annulus.

With regard to claim 39, Akinlade discloses a packer (14) for shutting the annulus.

With regard to claim 41, Akinlade discloses using drilling fluid during drilling.

With regard to claims 51-53, Akinlade teaches using a mechanical-activation mechanism to open a port (44), the mechanical-activation mechanism comprising a sliding sleeve.

With regard to claim 54, Akinlade teaches stimulating a second section of the formation by positioning the tool next to the formation and flowing a stimulation fluid through the tool.

With regard to claims 55 and 56, Akinlade teaches sealing the formation which was treated (see page 4, lines 8-18).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akinlade et al.

Akinlade fails to disclose the stimulation fluid being an unweighted drilling fluid.

It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have used, in conjunction with Akinlade's device, a stimulating fluid with a chemistry similar to that of drilling fluid, said fluid being an unweighted drilling fluid, as the examiner hereby takes official notice that it was notoriously conventional in the art to have used drilling fluids with a multitude of additives to both stimulate formations as well as prevent drilling fluid loss into formations.

***Allowable Subject Matter***

7. Claims 1-3, 8-11, 13-30, and 57-65 allowed.
8. Claims 47-50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claim 31 have been considered but are moot in view of the new ground(s) of rejection.

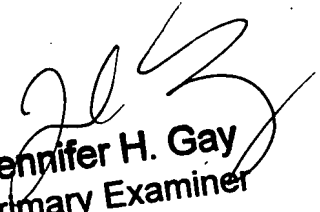
***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert E. Fuller whose telephone number is 571-272-0419. The examiner can normally be reached on Monday thru Friday from 8:00 AM - 5:30 PM. The examiner is normally out of the office every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

06/21/2007  
REF

  
Jennifer H. Gay  
Primary Examiner